

Progress Report on the Cooperative Environmental Agreement Legislation

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Progress Report on the Cooperative Environmental Agreement Program

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I. The Cooperative Environmental Agreement Program

Governor Thompson introduced the Environmental Cooperation Pilot Program as part of the 1997-1999 Biennial Budget. It is designed to evaluate innovative environmental regulatory methods.

Under this program DNR can enter into up to ten Cooperative Environmental Agreements in the next five years with persons who own or operate facilities required by law to be covered by licenses or permits. An environmental management system forms the basis for whole-facility regulation.

The intent of agreements is to establish superior environmental performance and reduce administrative burdens by superseding administrative requirements of permits and approvals specified in the agreement. Agreements are designed to promote the reduction of overall levels of pollution through this more flexible approach.

Agreements will include: a commitment to superior environmental performance; an environmental management system; specific waste reduction goals; any approvals replaced by the agreement; any operational flexibilities and variances granted; a commitment to release periodic performance evaluations; and a plan to involve public participation. Both regulated and non-regulated environmental impacts are eligible for inclusion in the Agreement.

DNR and the participating company are signatories to the agreement however, other parties can be involved in the negotiating process. The participating company is required to include public participation in this process and DNR will provide an opportunity for public comment for at least 30 days on any proposed issuance, amendment, or revocation of a Cooperative Environmental Agreement. The law also allows for public informational meetings if desired.

The following table illustrates common issues raised by industry regarding the current regulatory system and how the Cooperative Agreement program relates to those issues.

Table 1: Regulatory Issues and Environmental Management Opportunities

Common Theme/Issue	Relation to Cooperative Agreement Program, ISO 14001 Pilot and WDNR
Permit process is complex, information-intensive, and time-consuming.	Breakthrough legislation in the 1997-1999 Biennial Budget allows DNR the opportunity for ten cooperative agreements over five years with persons who own or operate facilities that are covered by licenses or permits under current law. Flexible approaches envisioned under this programs can streamline permit processing.
Permit rules focus on a single media and do not allow cross-media or pollution prevention trade off.	An ISO 14001 EMS shows the total facility's environmental impacts and goals for continual improvement. An EMS sets forth how it will assess the company's environmental performance.
Environmental reporting is fragmented, redundant, complex, and paper-intensive; it poorly addresses public concerns and needs.	ISO 14001 is a whole-facility approach for environmental management which integrates all media into one plan. WDNR is committed to helping facilities create an effective public outreach program through the Cooperative Agreement for interested persons.
Prescriptive compliance procedures, and the associated penalties, discourage companies from trying innovative approaches to protecting the environment.	ISO 14000 is a performance standard rather than a compliance standard. It provides a framework for establishing an environmental policy, setting performance objectives for the EMS, and continually improving the system. The Cooperative Agreement will offer deferred civil enforcement for self-discovered violations that can be quickly remedied.
Small business lack access to compliance and pollution prevention assistance and cannot afford the time and expense of implementing an ISO 14001 EMS.	WDNR will provide assistance at the request of the facility. Industry sector specialists from the Bureau of Cooperative Environmental Assistance are involved and ready to help.
The correlation between program activities relating to a specific organization and the associated fees or fines is sometimes perceived as onerous and unclear.	The Cooperative Environmental Agreement program is designed to reduce administrative burdens, reduce overall levels of pollution through a flexible approach, and provide one-stop permitting in measurable and verifiable terms.

II. Current Status

A. Outreach

The first year of the Cooperative Environmental Agreement Program has been primarily spent in setting up the program, educating the public, DNR staff and companies about the program, and in soliciting companies' participation. A fact sheet and application outline were developed and mailed to 400 major air sources in Wisconsin and to the members of the Small Business Advisory Council, the Small Business Environmental Council, and the ISO 14000 Working Group. A cover letter co-signed by Governor Thompson and Secretary Meyer introduced the program and invited companies to participate in the Cooperative Agreement Program (See appendix B.)

From the initial mailing we received 49 requests for additional information on the Cooperative Agreement Program. These interested companies were sent the 3-page application form.

Face-to face meetings explaining the program have been held at 11 companies along with numerous public speeches to provide information and answer specific questions on this program.

An informal poll was taken of DNR staff and business leaders asking what type of regulatory flexibility is either most commonly asked for or would be valuable to businesses in the State. The list (see appendix C) breaks down into 5 main categories: Testing, Reporting and Record keeping; Permitting; Standards and Regulations; Compliance, Inspection and Enforcement; and Resources.

B. Applications

Arbitrary application deadlines of June 1 and December 1 of each year were established. The two Wisconsin facilities submitted applications for this program so far are:

Kohler -- Generator Facility located in the Town of Mosel
Navistar International in Waukesha

Both companies have completed a baseline environmental evaluation of their facilities using an EMS protocol developed by the University of North Carolina.

The companies also submitted general flexibility requests which include:

1. Reduced sampling frequency for wastewater discharges.
2. Removal of requirements to monitor for pollutants not in the system based upon previous analyses.
3. One-stop permitting with one individual contact from the DNR.
4. Simplification of regulations and standards.
5. Reduced inspections as a result of implementation of an ISO 14001 Environmental Management System.
6. Public Sector endorsement of the Project, good public relations from the DNR, and credit for previous pollution prevention activities.
7. That regulatory flexibility be used where applicable to negotiate future agreements.
8. Single permit to cover a facility with a single, simplified reporting form.
9. A facility-wide permit cap.
10. Recognition of the Cooperative Agreement as enforceable as a Title V air permit.
11. Administrative approval of reuse of waste products.

WDNR is beginning the negotiation process with these two facilities.

C. Working with the US Environmental Protection Agency

EPA recognizes the need to support innovative regulatory programs being developed in the States. Accordingly, they negotiated an agreement to foster regulatory innovation with the Environmental Council of States (ECOS), which was signed in April 1998. This agreement solidifies a partnership where the states are a natural laboratory for testing new reinvention ideas and where EPA promotes clearer, cheaper, smarter environmental regulatory innovation at all levels of their organization (see appendix D).

The Cooperative Environmental Agreement program is one innovation that will be tested under the ECOS/EPA Regulatory Innovation Agreement. The agreement sets principles and expectations to guide both parties in the testing and measurement of regulatory innovations. This forms the basis for a partnership which differs from the current Federal oversight approach.

The statutory authority for the Cooperative Environmental Agreement Program only requires that EPA be consulted early in this process. US EPA is not a signatory to the Cooperative Environmental Agreements. However, a basic tenant of this program is to have the Cooperative Environmental Agreements viewed by the regulatory community and the public as enforceable documents. Ergo, we need US EPA to sanction the Cooperative Agreement process to make this happen.

Two meetings with US EPA Region were held to discuss specifics on the relationship between Wisconsin DNR and EPA in the Cooperative Environmental Agreement Program. We are currently working toward a Memorandum of Agreement on this program that would give WDNR the ability to undertake this pilot program without undue Federal oversight. A process is envisioned where EPA would be kept informed about the Agreement negotiations but would not be directly involved except at specified check points (such as the state granting any variances from current regulations). Specifics on this Memorandum of Agreement have yet to be worked out.

D. Challenges

The biggest challenge is interesting small businesses in the Cooperative Environmental Agreement Program. Small businesses have told us they won't consider participating in this pilot for a variety of reasons. These include: resource shortage, concern with engaging stakeholders, and not needing regulatory flexibility due to their limited regulatory exposure.

WDNR also faces a challenge in developing educational tools. Companies have approached WDNR on getting more information on what is expected of an interested person's group. Tools are needed so that the public both understands and knows how to impact the process.

III. Future Steps

The following objectives have been set for the next phase of this program:

1. By January 1999, have the first Cooperative Environmental Agreement negotiated and signed.
2. By December 1999, have two additional Cooperative Environmental Agreements negotiated and signed.
3. Pull an external committee together with representatives of government, environmental and business groups together to look at implementation issues for this program.
4. Develop a survey mechanism to determine interested person confidence in this process.
5. Track companies' environmental performance by using the UNC ISO 14000 data protocols.
6. Work with trade associations to help get small businesses involved in the program.
7. Work with US EPA to develop a memorandum of understanding on implementation of the Cooperative Environmental Agreement Pilot Program.

IV. Summary of Cooperative Environmental Agreement Legislation

Ten cooperative agreements will evaluate innovative environmental regulatory methods that meet the following goals: (See also Appendix A)

- Provide the same level of protection of public health as current regulations.
- Encourage systematic assessment of impacts to environment (ISO 14001)
- Encourage efficiency and cost-effective, verifiable strategies.
- Encourage superior environmental performance.
- Recognize and reward leading companies.
- Encourage the transfer of information.
- Consolidate permitting requirements.
- Grant regulatory flexibility.
- Reduce government transaction costs.
- Encourage public participation.
- Improve public information and access to performance information.
- Encourage facilities to work with communities.
- Increase trust among affected parties.
- Assess administrative burden and costs associated with operating under the agreement.
- Specify the term of the agreement for 5 years with a possible extension of an additional 5 years.

Content of Agreement

- Identify covered facility(s).
- Specify permits and approvals covered.
- Commit to an environmental management system.
- Commit to superior environmental performance.
- Specify goals in measurable terms.
- Identify specific changes.
- Contain enforceable pollution limits that are at least as stringent as current limits.
- Describe operational flexibility and variances.
- Carry requirements from any current approvals replaced.
- Require participants to submit a baseline performance evaluation within 180 days of the agreement.
- Require reporting of any violations discovered in a performance evaluation.
- Ensure that interested persons group(s) has the opportunity to comment on the EMS and review performance data.
- Require companies to assist interested persons to understand the implementation of the agreement.
- Require companies to periodically provide information to the public about their performance and check in with the interested person's group every 6 months.
- Describe how the company will measure public opinion on their participation in the agreement.

Variances

WDNR can issue any currently authorized variance as part of this program. In cases where variance authority is not specified, WDNR can issue variances if it results in a measurable overall reduction in pollution and either goes beyond compliance or provides for relief from administrative burden.

Application for an Agreement

Applicants should be covered by at least one approval issued by WDNR. The application consists of a draft agreement that covers all points in the content section of the legislation and a description of the process and

membership of the interested persons group. WDNR shall strive to select participants in a variety of types of facilities, sizes and locations. WDNR shall consult with the EPA.

Public Notice of Meetings

The public is given 30 days to comment on any issuance, amendment, or revocation of an agreement.

A draft agreement, fact sheet and public notice shall be prepared for all actions and distributed widely.

WDNR will hold a public informational meeting if there is a request.

Extension, Expiration, Amendment, or Revocation

An agreement can be renewed for one additional five-year period by concurrence of the Legislature. In addition, the following apply:

- When an agreement expires and a company submits information for approvals needed in lieu of the agreement, the agreement is held in place until appropriate approvals can be issued.
- WDNR can amend an agreement with consent of the company.
- WDNR can, after an opportunity for hearing, amend an agreement for cause.
- WDNR can revoke an agreement at the request of the participant.
- WDNR can revoke an agreement for: substantial non-compliance, failure to amend an agreement following department request, inability to meet reduction goals, or not addressing a substantive issue raised by a majority of interested persons within a reasonable time.
- A procedure for revocation is included in the statutory language.

Effect of the Agreements

The agreements will be considered enforceable documents and can supersede permits and approvals.

Fees

Participants shall pay the same fees as they would have if not under the cooperative agreement.

Reporting by Participants

Reporting under the Agreement fulfills environmental requirements except for the requirement of immediate reporting. Any change that consists of a modification not covered by the agreement shall be reported to the department.

Reports of Violations

Violations discovered during performance evaluations shall be reported within 45 days.

Compliance Schedules

WDNR can negotiate a compliance schedule for reported violations that does not exceed 12 months beyond the approval date of the compliance schedule.

Deferred Civil Enforcement

WDNR will not commence civil enforcement for 90 days on any violation uncovered as part of their performance evaluation (enforcement discretion).

- WDNR will not commence civil enforcement as long as participants are meeting a compliance schedule agreed to by both parties. If a compliance schedule is not being met, WDNR can collect stipulated penalties or revoke an agreement. Once an agreement is revoked, WDNR can commence civil enforcement.
- WDNR can commence civil enforcement at any time in case of imminent threat or serious harm to public health or the environment; or if WDNR discovers the violations before the performance evaluation uncovers them. (Note: None of these apply to criminal enforcement.)

Access to Records

All records, unless they receive confidential treatment as a trade secret or confidential business information, are considered open to the public.

Report on Progress of the Program

The Secretary of WDNR shall submit annual progress reports to the Governor and the Legislature. After the 48th month, a comprehensive report shall be made to the Governor and Legislature regarding continuation of the program.